HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No. 10323 of 2007

Between:

M. Jagadish

… Petitioner

And

Municipal Corporation of Hyderabad
Rep. by its Commissioner, Hyderabad & others

… Respondents

:: J U D G M E N T ::

Counsel for the petitioner : Shri Ghanta Rama Rao

Counsel for respondent No.1 : Shri R. Ramachandra Reddy

June 26, 2007

Per G.S. Singhvi, CJ

The question whether the compound wall constructed by the petitioner in premises bearing No.18-7-181/24, Gowlipura, Hyderabad without obtaining necessary permission from the authority prescribed under the Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act') can be demolished by the respondents requires investigation into

contentious issues of fact. The petitioner is conscious of this fact and yet he has invoked the jurisdiction of this Court under Article 226 of the Constitution of India for quashing notice dated 9-5-2007 issued by Assistant City Planner, Circle-I, Municipal Corporation of Hyderabad (now Greater Hyderabad Municipal Corporation).

A perusal of the record shows that on receipt of complaints dated 1-4-2007 and 24-4-2007 made by Omkar Harijan Welfare Association, Gowlipura, Hyderabad (the first complaint is signed by as many as 19 residents of Gowlipura) that the petitioner has occupied the existing lane through which sewerage drain is passing and blocked the same by constructing a wall, the Additional Commissioner (South Zone) endorsed the same to the Executive Engineer, Division-III for inspection. The latter inspected the premises and found that newly constructed wall is obstructing the storm water drain. On receipt of the inspection report, the Commissioner, Municipal Corporation of Hyderabad issued notice dated 30-4-2007 under Section 461 of the Act requiring the petitioner to submit sanctioned plan so as to enable the competent authority to verify the boundaries of the property. The petitioner did not submit the sanctioned plan, but filed reply dated 1-5-2007 denying the allegation that the construction made by him is unauthorised and is obstructing the storm water drain. Thereafter, notice under Section 452 was issued requiring him to show cause against the proposed removal of the compound wall. He submitted explanation dated 4-5-2007 and, at the same time, filed O.S.No.1765 of 2007 in the Court of VIII Junior Civil Judge, City Civil Court, Hyderabad for permanent injunction against C. Srinu and others. He also filed I.A.No.1043 of 2007 and succeeded in persuading the trial court to pass an order of injunction.

After expiry of the period specified in notice dated 1-5-2007, the Assistant City Planner issued the impugned notice dated 9-5-2007 under Section 636 of the Act.

The petitioner has questioned the notice on the grounds that the

same is violative of the injunction order passed by the trial court; that the construction made by him is in consonance with the policy contained in G.O.Ms.No.419, M.A., dated 30-7-1998 and that the action initiated by the respondents is tainted by
mala fides, inasmuch as they are acting at the behest of his opponents in the locality.

In the counter affidavit filed on behalf of the respondents, the allegation of mala fides has been denied and it has been averred that action has been initiated against the petitioner because he has constructed the compound wall without obtaining sanction and the same is obstructing the storm water drain.

We have heard learned counsel for the parties and scanned the record including the photographs.

The questions whether the petitioner has constructed wall on his own land or in the lane of the colony and whether the same is obstructing the storm water drain can be decided by the court only after giving both the parties opportunity to adduce oral and documentary evidence. This exercise can appropriately be done by a civil court and not by this Court in exercise of its power under Article 226 of the Constitution of India. Therefore, we do not see any reason to entertain the prayer made by the petitioner.

The remedy of civil suit available to the petitioner must be treated as an effective alternative remedy because he has already filed suit for permanent injunction and succeeded in persuading the concerned court to pass an order of interim injunction.

For the reasons stated above, the writ petition is dismissed leaving the petitioner free to pursue the civil suit.

As a sequel to dismissal of the writ petition, WPMP.No.13039 of 2007 filed by the petitioner for interim relief is also dismissed.

G.S. SINGHVI, CJ

26th June, 2007

C.V. NAGARJUNA REDDY, J

ARS